

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:03CV314-1-MU

CHARLES LOUIS FUHRY,

Plaintiff,

v.

NC DEPT. CORRECTIONS, et al.,

Defendants.

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O R D E R

THIS MATTER comes before the Court upon its own motion.

On January 7, 2003, Plaintiff filed a Complaint pursuant to 42 U.S.C. § 1983 with this Court. On January 7, 2004, Defendants filed a Motion for Summary Judgment asking that the Court dismiss Plaintiff's Complaint. On January 14, 2004, this Court issued a notice in compliance with Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975). In this Order, the Court notified the Plaintiff that a Motion for Summary Judgment had been filed and that if the Plaintiff failed to respond to this motion within thirty days, the Court might grant the Motion for Summary Judgment. On February 18, 2004, this Court granted Plaintiff an extension of time up to and including March 22, 2004, in which to respond to Defendant's Motion for Summary Judgment. On May 10, 2004, believing that Plaintiff had not responded, this Court granted Defendant's Motion for Summary Judgment.

Subsequently, it has come to this Court's attention that on March 20, 2004, Plaintiff had timely responded to Respondent's Motion for Summary Judgment but that the response had not been docketed prior to the issuance of this Court's dismissal Order. Because this Court did not consider

Plaintiff's response in ruling on Defendant's Motion for Summary Judgment, this Court will vacate its May 10, 2004, Order.

IT IS THEREFORE ORDERED THAT this Court's May 10, 2004, Order is vacated.

Signed: January 13, 2006

A handwritten signature in black ink, reading "Graham C. Mullen", written over a horizontal line.

Graham C. Mullen
Chief United States District Judge

